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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 16.7.2019**

% W.P.(C) 7530/2019

AMBUJ A KASLIWAL & ANR Petitioners

Through: Mr. Rajiv Nayyar, Sr. Adv. with Mr.
Ankur Sood, Mr. Sidhant Kumar, Mr.
Ankush Bhardwaj, Advocates.

Versus

KOTAK MAHINDRA BANK PVT LTD & ORS Respondents

Through: Mr. T.K.Ganju, Sr. Adv. with Mr.
Suresh Dobhal, Mr. Prarthna Dogra
and Ms. Kanchan Dobhal, Advocates
for R-1.

Mr. Sudhir Kumar Makkar, Sr. Adv.
with Ms. Jayashree Shukla Dasgupta,
Advocates for R-2.

Mr. Ashish Rana, Adv. for R-4.

Mr. Akhil P. Chhabra and Ms. Ritu
Chhabra Advocates for R-5.

Ms. Aditi Sharma, Adv. for R-6.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. Issue notice. Counsels for the respondents no.1, 2, 4,5 and 6 accept notice. The other respondents are proforma respondents and in view of the

order that we propose to pass, we do not consider it necessary to issue notice to them. We have heard learned Senior counsels for the parties represented, and proceed to dispose of the writ petition at this stage.

2. The petitioners have assailed the orders dated 27.2.2019 and 9.4.2019 passed by the Debts Recovery Appellate Tribunal in Appeal No. 311/2018 arising out of OA No.281/2018. By the first order dated 27.2.2019, the learned DRAT while dealing with I.A No.511/2018 preferred by the petitioners for grant of waiver to the appellants/petitioners from making pre-deposit of 50% of the debt determined by the DRT, directed the petitioners/appellants to make pre-deposit of 50% of the amount of 68,18,92,841/-. By the second order, the application preferred by the appellants/petitioners i.e I.A No. 361/2019-whereby the petitioner sought review/recall of the first order, was rejected.

3. The petitioners are the guarantors in respect of credit facilities advanced by the Respondent No.1-Kotak Mahindra Bank Pvt. Ltd. & Ors. to the principal borrower M/s Hindon River Mills Limited. The respondent no.1 preferred the aforesaid Original Application to recover the amount due to it on account of default in repayment of loans. It appears that at some stage, a settlement was arrived at between the parties, and in terms of the settlement, the respondent-bank agreed to receive Rs.145 crores on certain terms and conditions. Though, it is contended on behalf of the respondent-bank that the terms and conditions were not adhered to by the principal borrower, the DRT has, vide its judgment dated 15.3.2018 allowed the Original Application and directed as follows:-

“56. In the above facts and circumstances of the present case, where the repo rate of interest of the RBI is 6% per annum and the bank are granting loans at the rate in between 8 to 9 percent per annum for priority sector, I am of the considered opinion that interest @ 9% per annum is quite reasonable, just and proper in the facts and circumstances of the present case. Accordingly, it is directed that the defendants no.1 to 3, jointly and severally, will have to pay the Settlement Amount of Rs.145 crores with future interest @ 9% per annum from the date of settlement i.e 5th July, 2012 till realization on reducing balance after taking the amount paid i.e Rs.152,81,07,159/- during the pendency of the present O.A, recoverable from the mortgaged property. As the applicant bank has realized a sum of Rs.152,81,07,159/- by appropriating the compensation amount deposited by defendants no.7 & 8 on the principle of pari-passu charge defendant no.5 Yes Bank, assignee of the debt assigned by defendant no.4 EXIM Bank, will have to appropriate to recover its debt when the mortgaged property is sold in proportionate to the debts of the applicant bank and defendant no.5 Yes Bank and thereafter if any amount remains, the same will go to the applicant bank. The applicant bank is directed to file the revised statement of account before the Recovery Officer, DRT-II, Delhi. The Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-II, Delhi. The Registry of this Tribunal is further directed to issue the free copy of this judgment and send the same to the both parties. Parties are directed to appear before the learned Recovery Officer, DRT-II Delhi on 18th May, 2018. The present O.A is accordingly disposed of. File be consigned to records.”

4. From the above extract, it would be seen that the respondent-bank during the pendency of the Original Application received an amount of

Rs.152,81,07,159/-, which was the compensation amount deposited by the NHAI and ADM, Ghaziabad, on account of acquisition of land belonging to the principal borrower. Thus, it appears from the operative part of the directions issued by the Tribunal, that it issued a certificate in favour of the respondent- bank for the settlement amount of Rs. 145 crores with future interest at the rate of 9% per annum from the date of settlement i.e 5th July 2012 till the realization on reducing balance, after taking the amount paid i.e Rs.152,81,07,159/- into account.

5. The submission of Mr. Nayyar, learned senior counsel for the petitioners is that the DRAT has not appreciated the fact that there was no occasion for the petitioners to be required to deposit any amount as a pre-condition under Section 21 of the Recovery of Debts and Bankruptcy Act. The submission of Mr. Nayyar is that the recovery certificate itself is in respect of Rs.145 crores with interest. He has tendered in Court the certificate issued by the DRT to support his submission. He submits that merely on account of the fact that adjustment has been directed of the amount recovered by the respondent-bank of Rs.152,81,07,159/-, it does not follow that the recovery certificate is for the balance amount, on the premise that the amount claimed by the respondent-bank is Rs.221 crores (approximately 145 crores with interest at 9% per annum from 5th July 2012 onwards). In support of his submission, Mr. Nayyar has sought to place reliance on the decision of the Division Bench of this Court in the case of ***Shrishti Arogyadham Pvt. Ltd. Vs. Punjab National Bank & Ors.*** WP(C) 12299/2018 decided on 27.11.2018. The Division Bench was dealing with the writ petition arising out of an order passed by the DRAT. In that case, an

order had been passed by the DRT on an application under Section 17 of the SARFAESI Act against the petitioner, which the petitioners had assailed before the DRAT. The Division Bench accepted the contention of the petitioner that the amount realized on auction of the property, was entitled to adjustment in favour of the debtor, and consequently, there was no question of requiring the petitioners to make any further deposit in terms of Section 21 of the aforesaid Act.

6. Mr. Nayyar further submits that earlier in *intra parties* appeal i.e appeal no. 508/2016, the respondent-bank had itself consented to hearing of the appeal without insisting on any further deposit in view of the fact that land acquisition compensation to the tune of Rs.62,31,87,312/- had been received by it. In this regard, a copy of the order dated 3.3.2017 passed by the DRAT is tendered before us.

7. On the other hand, Mr. Ganju, learned Senior counsel appearing for Respondent No.1 submits that on reading of para 56 of the judgment passed by the DRT in the Original Application, it would be seen that the decretal amount is the balance amount recoverable by the respondent-bank which translates to Rs.68 crores is taken note of by the DRT. He submits that the respondent-bank is also aggrieved by the said judgment passed by the DRT, and has preferred an appeal which is pending consideration.

8. Mr. Makkar, learned Senior counsel, who appears on behalf of the principal debtor, submits that the said respondent has also preferred a cross-appeal before the DRAT from the judgment of the DRT.

9. Having heard learned senior counsels for the parties, we are of the considered view that learned DRAT has not viewed the aspect of pre-deposit correctly in the present case. The amount of Rs. Rs.152,81,07,159/- was received by the respondent-bank during the pendency of the Original Application. The respondent-bank did not amend its Original Application to claim that it has adjusted the said amount, and did not limit its claim for the balance amount. Consequently, while adjudicating the Original Application, the DRT has proceeded on the basis that the respondent-bank is bound by the settlement amount of Rs.145 crores, and is entitled to future interest thereon at the rate of 9% per annum from 5th July, 2012 onwards till realization on the reducing balance, after taking into account the amount of Rs.152,81,07,159/- received during the pendency of the Original Application.

10. Aforesaid being the position, merely because the amount of Rs.152,81,07,159/- was received by the respondent-bank before passing of the final judgment, and not thereafter, would make no difference while considering the aspect of pre-deposit that the debtor, or the guarantor would have to deposit in terms of Section 21 of the aforesaid Act.

11. We are also informed that there are other valuable properties lying mortgaged, wherein the respondent-bank has interest alongwith other creditors, namely, YES Bank. No doubt, the DRAT has restricted the right of the respondent-bank in respect of the recovery of further amount on sale of the other mortgaged property, if the need therefor arises. However, the respondent-bank has already preferred an appeal which is pending

consideration before the DRAT. We are, therefore, of the view that the appeal preferred by the petitioners-appellants should be heard by the DRAT without insisting on any further deposit at this stage. The impugned orders dated 27.2.2019 and 9.4.2019 are, therefore, set aside. We request the DRAT to hear all the appeals and cross-appeals at the earliest and preferably within the next three months. Parties shall appear before the DRAT on 5.8.2019, the date already fixed, when the other appeals are listed arising out of the judgment of the Tribunal.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 16, 2019

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